IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE NINETEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL NO : 1278 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 02/08/2004 in WP NO : 13355 OF 2004 on the file of the High Court.)

Between:

S.M.Creative Electronics Limited, 10 Electronic City,

Sector-18, Gurgaon 122015, Haryana, India, rep.by its Branch Head and Authorised Representative

Sri T.Jaya Sree Ramulu, having its Branch Office at C-5,

1st Floor, Vikrampuri Colony, Secunderabad

..... APPELLANT

AND

1 Bharat Sanchar Nigam Ltd (Govt.of India Enterprise)
9th floor, Room No.916, Door Sanchar Bhavan,

Nampally Station Road, Abids, Hyderabad rep.by its
Chief General Manager, A.P.Circle
2 Bharat Sanchar Nigam Ltd (Govt.of India Enterprise)
Room No.907, 9th Floor, Door Sanchar Bhavan,
Nampally Station Road, Abids, Hyderabad rep.by its
Asst.General Manager, (M.W.S.W.P.)
3 M/s Delta Energy Systems India Pvt.Ltd 34 Udyog
Vihar, Phase-4, Curgaon 122016
Haryana, India rep.by its Authorised Representative
Mr.Harish Tandon.

.....RESPONDENTS

Counsel for the Appellant:MR.V.V.N.NARAYANA RAO

Counsel for the Respondents 1 & 2 : Mr. Kanthi Narahari, SC for BSNL.

Counsel for the respondent No.3: None appeared.

The Court made the following :

ORAL JUDGMENT:

(Per Hon'ble The Chief Justice)

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1. Appellant was one of the bidders who offered his bid pursuant to notice inviting tender issued by respondent No.2. Appellant did not obtain the tender document by depositing cash. But as per the information supplied in the notice inviting tenders, appellant downloaded the tender document from the Website of the respondent – BSNL., and submitted its bid along with prescribed documents. In such like situation, tender notice stated that bidder

should submit a demand draft in favour of the Accounts Officer (Cash) for the prescribed fee before the time of bid opening to the Assistant General Manager, Bharat Sanchar Nigam Limited.

2. Section–II of Instructions to Bidders require bid to be submitted in two covers. The first cover to contain the original and copy of the bid duly marked. The second cover to contain documents establishing bidders eligibility as per clause 2 along with bid security as per clause 12. Both the covers were required to be sealed separately.

3. It is an admitted fact that before opening the bid contained in the first cover, second envelope was to be opened first in order to satisfy about the eligibility of the bidder.

3. Petitioner – appellant's grievance is that it had obtained demand draft for the requisite amount in favour of the Accounts Officer (Cash), BSNL., as required under the notice inviting tender and had put it in the first cover which was also duly sealed and that the tenders were duly submitted along with a covering letter. In the covering letter the petitioner had informed the Assistant General Manager that petitioner was participating in the tender supported by documents whereunder as many as 25 documents are mentioned and the first document is the demand draft worth Rs.560=00 towards tender cost, besides other documents showing that petitioner's eligibility as bidder. The covering letter did not show as to which of the documents form part of the first cover and which of the documents form part of the second cover.

4. On the date of opening of bids, second cover obviously was opened and consequently endorsement was made by the officer concerned as regards

petitioner that price bid eligibility documents does not contain cost of bid document of Rs.560=00 (The document downloaded from website). Hence financial bid not opened. It is the petitioner – appellant's case that its authorised representative impressed upon the officer concerned that cost of bid document in the form of demand draft was in the first cover, namely, financial bid. Therefore, they should be opened to find out whether petitioner has or has not satisfied the eligibility criteria. It was not so done and the tender was awarded to the successful bidder, against which petitioner felt aggrieved and filed writ petition questioning the action of the respondents.

5. Learned single Judge dismissed the writ petition on the ground that it was a condition precedent for the petitioner to satisfy that it fulfilled the requisite qualification before the documents are opened and reading of the various clauses would suggest that at the most when forms are downloaded from the website, the demand draft ought to have been found in the second cover.

6. Learned counsel for the petitioner – appellant vehemently contends that nowhere in the tender conditions, appellant was required to put the demand draft in the second cover. As the demand draft was original, the petitioner had put it in the first cover since first cover was required to contain original and copy.

7. Having considered the submissions made across the bar, we are of the view that there is no question of interference in this case inasmuch as tender notice inviting tender clearly stipulated that in case intending bidders would download the tender document from website, such bidders should submit demand draft before the time of bid opening. Merely putting the demand draft in the first cover, which would obviously was not opened before opening of the second cover containing documents satisfying the bidder's qualification, would not amount to submission of the demand draft before the time of bid opening. We also see no illegality committed by the officer opening the tender document in not adhering to the request of the petitioner's representative of

opening first cover in order to ascertain the petitioner's eligibility since first cover would not be opened unless condition was satisfied that petitioner was duly qualified to bid. Only persons satisfying the requirements, namely, eligible bidders would be entitled to have the first cover opened and since it was not proved by the time the second cover was opened that petitioner had submitted demand draft, action of the respondents in declining to open the petitioner's financial bid cannot be faulted with. Hence we are in agreement with the reasoning given by the learned single Judge in dismissing the writ petition.

8. Writ appeal fails and is dismissed. No costs.

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DEVINDER GUPTA. C.J.,

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C.V. RAMULU. J.,

Dated: 19.08.2004.

VRK.

To

1. The Chief General Manager, A.P. Circle, Bharat Sanchar Nigam Limited (Govt. of India Enterprise), 9th Floor, Room No.916, Door Sanchar Bhavan, Nampally Station Road, Abids, Hyderabad.

2. The Assistant General Manager (M.M.SWP), Bharat Sanchar Nigam Limited (Govt. of India Enterprise), Room No.907, 9th Floor, Door Sanchar Bhavan, Nampally Station Road, Abids, Hyderabad.

3. Two CD copies.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE C.V. RAMULU.

W.A.NO. 1278 OF 2004.

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(Judgment of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 19.08.2004.

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